

Supplemental Letter of Findings: 04-20110243
Sales and Use Tax
For the Years 2008 and 2009

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ISSUE

I. Sales and Use Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-8.1-3-12; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessments on sales of tangible personal property.

STATEMENT OF FACTS

Taxpayer is an Indiana company which provides its customers car and truck maintenance and repair services. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit for tax years 2008 and 2009. The audit utilized two different approaches in examining Taxpayer's accounts and records. Due to the volume of Taxpayer's sales records, the Department utilized a sample selected from Taxpayer's 2008 sales records and a projection method to determine Taxpayer's sales tax liabilities. To determine Taxpayer's use tax liabilities, the Department reviewed "all purchase invoices, except purchase invoices for inventory."

Pursuant to the audit, the Department determined that Taxpayer failed to collect and remit sales tax on some transactions. The Department's audit also assessed use tax because Taxpayer did not pay sales tax or self-assess and remit the use tax for certain purchases of tangible personal property, which Taxpayer used for its business. Taxpayer protested the assessments. A hearing was held and the Letter of Findings Number 04-20110243 sustained Taxpayer's protest in part and denied in part.

Subsequently, Taxpayer submitted additional documentation and requested a rehearing. Upon reviewing the additional documentation and after several discussions with Taxpayer, this Supplemental Letter of Findings results and is based on the additional information submitted. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition.

DISCUSSION

In its rehearing request, Taxpayer claimed that eleven (11) retail transactions were exempt from sales tax and, therefore, it was not responsible for collecting and remitting the sales tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-4-1, in pertinent part, states:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

- (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or
 - (3) the property is transferred conditionally or otherwise.

Accordingly, Taxpayer is a retail merchant and, therefore, is responsible for collecting and remitting the sales tax.

IC § 6-8.1-5-1(b) further states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.

In this instance, during the audit period and pursuant to IC § 6-8.1-3-12(b), the Department utilized statistical sampling to determine Taxpayer's sales tax liability. At the administrative hearing, Taxpayer argued that certain transactions within the sample population were exempt from sales tax because its customers qualified for

exemptions outlined in the Indiana law. The Department thus allowed Taxpayer additional time to submit additional documentation, such as special exemption certificates. Taxpayer, however, failed to timely submit the properly executed special exemption certificates before the audit was concluded. After the administrative hearing, the Letter of Findings further determined that Taxpayer's documentation was insufficient to support its claim that its sales transactions at issue within the sample population were exempt from sales tax.

After the Letter of Findings was issued, Taxpayer submitted additional documentation to support its position that eleven (11) of the sales transactions were exempt from sales tax. Upon reviewing Taxpayer's additional documentation, the Department agrees that Taxpayer has provided sufficient documentation demonstrating that the following ten (10) transactions were exempt from sales tax.

Invoice Date	Ref. Nbr.	Description	Amount
11/26/2008	0169734	parts	\$ 58.54
11/28/2008	0169691	parts	\$161.17
11/28/2008	0169613	parts	\$346.83
11/14/2008	0169439	parts	\$ 30.80
11/28/2008	0169640	parts	\$ 67.60
11/30/2008	0169741	parts	\$ 23.32
11/30/2008	0169698	parts	\$527.19
11/30/2008	0169836	parts	\$684.04
11/28/2008	0169685	parts	\$111.06
11/28/2008	0169452	parts	\$654.08

Thus, the Department will remove the above mentioned ten (10) transactions from the sampling population and recalculate Taxpayer's sales tax liability. Taxpayer's documentation, however, was not sufficient to show that the November 19, 2008 transaction (Ref. Nbr. 0168563, in the amount of \$193.06) was exempt from sales tax. Taxpayer thus remains responsible for the sales tax.

FINDING

Taxpayer's protest of the eleven (11) transactions is sustained in part and denied in part. Taxpayer is sustained on ten (10) transactions. The Department will remove those ten (10) transactions from the sampling population and recalculate the sales tax due in a supplemental audit.

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